

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA : **CIVIL ACTION NO. 1:05-CR-146**
:
v. : **(Chief Judge Conner)**
:
CREMNE BRANCH :

ORDER

AND NOW, this 7th day of August, 2015, upon consideration of defendant's motion (Doc. 178) to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255, and it appearing that upon receipt of a § 2255 motion the court must dismiss the motion “[i]f it plainly appears from the motion . . . that the moving party is not entitled to relief,” R. GOVERNING § 2255 CASES R. 4(b), and it further appearing that defendant previously filed a § 2255 motion, (see Doc. 146),¹ and that a defendant filing a second or successive § 2255 must “move in the appropriate court of appeals for an order authorizing the district court to consider the application,” 28 U.S.C. § 2244(b)(3)(A); see also § 2255(h), and the court concluding that “[w]hen a second or successive habeas petition is erroneously filed in a district court without the permission of a court of appeals, the district court’s only option is to dismiss the petition or transfer it to the court of appeals,” Robinson v. Johnson, 313 F.3d 128, 140 (3d Cir. 2002) (applying §2244 to a successive petition filed under 28 U.S.C.

¹ On April 14, 2010, the court informed defendant that “[i]f you elect to have your motion construed and ruled upon as one under 28 U.S.C. § 2255, you may lose your right to file second or successive motions to correct or vacate your sentence, even if those motions raise claims not presented in the motion currently before the court.” (Doc. 148 at 3). Defendant subsequently requested that the court rule upon his motion under § 2255.

§ 2254); see also 28 U.S.C. § 2255(h) (stating that § 2244 controls successive motions under § 2255), and that defendant has not petitioned the appropriate court of appeals for leave to file a second or successive § 2255 motion, it is hereby

ORDERED that:

1. Defendant's motion (Doc. 178) to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 is DISMISSED without prejudice to his right to petition the United States Court of Appeals for the Third Circuit for permission to file a second or successive motion under § 2255. See R. GOVERNING § 2255 CASES R. 4(b).
2. The court finds no basis to issue a certificate of appealability. See 28 U.S.C. § 2253(c)(2); R. GOVERNING § 2255 CASES 11(a).

/S/ CHRISTOPHER C. CONNER

Christopher C. Conner, Chief Judge
United States District Court
Middle District of Pennsylvania